

## Federal Housing Finance Agency

## § 1209.7

entity, executive officer, director, or entity-affiliated party that has been served with a temporary order pursuant to section 1372(a) or (b) of the Safety and Soundness Act (12 U.S.C. 4632(a), (b)) to apply to the United States District Court for the District of Columbia within 10 days after service of the temporary order for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of the temporary order, pending the completion of the administrative enforcement proceeding. The district court has jurisdiction to issue such injunction.

(e) *Enforcement of temporary order.* As provided by section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)), in the case of any violation, threatened violation, or failure to obey a temporary order issued pursuant to this section, the Director may bring an action in the United States District Court for the District of Columbia for an injunction to enforce a temporary order, and the district court is to issue such injunction upon a finding made in accordance with section 1372(e) of the Safety and Soundness Act (12 U.S.C. 4632(e)).

### § 1209.7 Civil money penalties.

(a) *Civil money penalty proceedings*—(1) *In general.* Section 1376 of the Safety and Soundness Act (12 U.S.C. 4636) governs the imposition of civil money penalties. Upon written notice, which shall conform to the requirements of § 1209.23 of this part, and a hearing on the record to be conducted in accordance with subpart C of this part, the Director may impose a civil money penalty on any regulated entity or any entity-affiliated party as provided by section 1376 of the Safety and Soundness Act for any violation, practice, or breach addressed under sections 1371, 1372, or 1376 of the Safety and Soundness Act (12 U.S.C. 4631, 4632, 4636), except with regard to the enforcement of housing goals that are addressed separately under sections 1341 and 1345 of the Safety and Soundness Act (12 U.S.C. 4581, 4585).

(2) *Amount of penalty*—(i) *First Tier.* Section 1376(b)(1) of the Safety and Soundness Act (12 U.S.C. 4636(b)(1)) prescribes the civil penalty for violations

as stated therein, in the amount of \$10,000 for each day during which a violation continues.

(ii) *Second Tier.* Section 1376(b)(2) of the Safety and Soundness Act (12 U.S.C. 4636(b)(2)) provides that notwithstanding paragraph (b)(1) thereof, a regulated entity or entity-affiliated party shall forfeit and pay a civil penalty of not more than \$50,000 for each day during which a violation, practice, or breach continues, if the regulated entity or entity-affiliated party commits any violation described in (b)(1) thereof, recklessly engages in an unsafe or unsound practice, or breaches any fiduciary duty, and the violation, practice, or breach is part of a pattern of misconduct; causes or is likely to cause more than a minimal loss to the regulated entity; or results in pecuniary gain or other benefit to such party.

(iii) *Third Tier.* Section 1376(b)(3) of the Safety and Soundness Act (12 U.S.C. 4636(b)(3)) provides that, notwithstanding paragraphs (b)(1) and (b)(2) thereof, any regulated entity or entity-affiliated party shall forfeit and pay a civil penalty, in accordance with section 1376(b)(4) of the Safety and Soundness Act (12 U.S.C. 4636(b)(4)), for each day during which such violation, practice, or breach continues, if such regulated entity or entity-affiliated party:

(A) Knowingly—

(1) Commits any violation described in any subparagraph of section 1376(b)(1) of the Safety and Soundness Act;

(2) Engages in any unsafe or unsound practice in conducting the affairs of the regulated entity; or

(3) Breaches any fiduciary duty; and

(B) Knowingly or recklessly causes a substantial loss to the regulated entity or a substantial pecuniary gain or other benefit to such party by reason of such violation, practice, or breach.

(b) *Maximum amounts*—(1) *Maximum daily penalty.* Section 1376(b)(4) of the Safety and Soundness Act (12 U.S.C. 4636(b)(4)), prescribes the maximum daily amount of a civil penalty that may be assessed for any violation, practice, or breach pursuant to section 1376(b)(3) of the Safety and Soundness Act (12 U.S.C. 4636(b)(3)), in the case of

any entity-affiliated party (not to exceed \$2,000,000.00), and in the case of any regulated entity (\$2,000,000.00).

(2) *Inflation Adjustment Act.* The maximum civil penalty amounts are subject to periodic adjustment under the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (28 U.S.C. 2461 note), as provided in subpart E of this part.

(c) *Factors in determining amount of penalty.* In accordance with section 1376(c)(2) of the Safety and Soundness Act (12 U.S.C. 4636(c)(2)), in assessing civil money penalties on a regulated entity or an entity-affiliated party in amounts as provided in section 1376(b) of the Safety and Soundness Act (12 U.S.C. 4636(b)), the Director shall give consideration to such factors as:

- (1) The gravity of the violation, practice, or breach;
- (2) Any history of prior violations or supervisory actions, or any attempts at concealment;
- (3) The effect of the penalty on the safety and soundness of the regulated entity or the Office of Finance;
- (4) Any loss or risk of loss to the regulated entity or to the Office of Finance;
- (5) Any benefits received or derived, whether directly or indirectly, by the respondent(s);
- (6) Any injury to the public;
- (7) Any deterrent effect on future violations, practices, or breaches;
- (8) The financial capacity of the respondent(s), or any unusual circumstance(s) of hardship upon an executive officer, director, or other individual;
- (9) The promptness, cost, and effectiveness of any effort to remedy or ameliorate the consequences of the violation, practice, or breach;
- (10) The candor and cooperation, if any, of the respondent(s); and
- (11) Any other factors the Director may determine by regulation to be appropriate.

(d) *Review of imposition of penalty.* Section 1376(c)(3) of the Safety and Soundness Act (12 U.S.C. 4636(c)(3)) governs judicial review of a penalty order under section 1374 of the Safety and Soundness Act (12 U.S.C. 4634).

**§ 1209.8 Removal and prohibition proceedings.**

(a) *Removal and prohibition proceedings—(1) Authority to issue order.* As provided by section 1377(a)(1) of the Safety and Soundness Act (12 U.S.C. 4636a(a)(1)), the Director may serve upon a party described in paragraph (a)(2) of this section, or any officer, director, or management of the Office of Finance, a notice of the intention of the Director to suspend or remove such party from office, or to prohibit any further participation by such party in any manner in the conduct of the affairs of the regulated entity or the Office of Finance.

(2) *Applicability.* As provided by section 1377(a)(2) of the Safety and Soundness Act (12 U.S.C. 4636a(a)(2)), a party described in this paragraph is an entity-affiliated party or any officer, director, or management of the Office of Finance, if the Director determines that:

- (i) That party, officer, or director has, directly or indirectly—
  - (A) Violated—
    - (1) Any law or regulation;
    - (2) Any cease and desist order that has become final;
    - (3) Any condition imposed in writing by the Director in connection with an application, notice, or other request by a regulated entity; or
    - (4) Any written agreement between such regulated entity and the Director;
  - (B) Engaged or participated in any unsafe or unsound practice in connection with any regulated entity or business institution; or
  - (C) Committed or engaged in any act, omission, or practice which constitutes a breach of such party's fiduciary duty;
    - (ii) By reason of such violation, practice, or breach—
      - (A) Such regulated entity or business institution has suffered or likely will suffer financial loss or other damage; or
      - (B) Such party directly or indirectly received financial gain or other benefit; and
    - (iii) The violation, practice, or breach described in subparagraph (i) of this section—
      - (A) Involves personal dishonesty on the part of such party; or
      - (B) Demonstrates willful or continuing disregard by such party for the